

Crossroads Community Correctional Center, Safer Foundation and Professional, Technical and Clerical Employees Union, Local 707, affiliated with the National Production Workers Union, Petitioner. Case 13-RC-18408

August 31, 1992

ORDER DENYING REVIEW

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Petitioner's request for review of the Regional Director's Decision and Order (relevant portions of which are attached), as well as the Employer's opposition thereto. The request for review is denied as it raises no substantial issues warranting review.¹

¹ The only issue raised in the request for review is whether employees working in the classification of Correctional Residence Counselor I are guards within the meaning of Sec. 9(b)(3) of the Act.

APPENDIX

The Employer has received a contract for \$3,351,484.75 from the State of Illinois Department of Corrections to operate a work release program for inmates of the Department of Corrections. The work release program is known as the Crossroads Community Correctional Center, which is located at 3201 West Arthington Street in Chicago. The Crossroads program acts as a bridge to prepare resident inmates, who will eventually be released for life outside of prison. The contract is effective from July 1, 1990 to June 30, 1993. The Employer does not provide its own food service for the residents of the Crossroads program; it has a contract with Tri-R Vending which operates the food service on the Crossroads premises. The Employer stipulated that the contract with Tri-R Vending is in excess of \$50,000.

The first inquiry is whether the Board has statutory jurisdiction over the Employer. The Employer clearly satisfies the Board's jurisdictional standards for non-profit charitable enterprises. *Goodwill Industries of Denver*, 304 NLRB 764 (1991). During the fiscal year 1991, the Employer received revenues in excess of \$8,200,000. The Employer does business in Arkansas, Florida, and Illinois and Iowa, and is thus involved in interstate commerce. Therefore, I find what the Employer is engaged in commerce within the meaning of the Act.

The other inquiry regarding jurisdiction is whether the Employer is a joint employer with a political subdivision because of its contractual relationship with the State of Illinois. In the alternative, the Employer requests that the Board not exercise jurisdiction over the Employer since the State of Illinois has such control over the employment terms of the employees in question that collective bargaining would be meaningless and ineffective. Based on the findings below, I find it unnecessary to decide whether the Employer is a joint

employer or if its contractual relationship with the State of Illinois will render any collective bargaining ineffective.

The Employer also urges dismissal of the petition on the basis that Section 9(b)(3) of the Act prohibits the Board from certifying Petitioner as the representative of a bargaining unit of guards since the Petitioner admits to membership employees other than guards as members.

The Petitioner contends that the unit it seeks to represent is not a guard unit. Contrary to the Employer, the Petitioner asserts that the employees in the unit sought only provide counseling and support to the inmates participating in the Crossroads work release program.

The Petitioner seeks to represent employees who bear the title "Correctional Residence Counselor I" (CRC I). At the hearing, the parties stipulated, and I find that the unit sought by the Petitioner is appropriate for collective bargaining purposes.

The focus of this proceeding is the Employer's Crossroads work release program, which employs about 72 employees. The Department of Corrections arranges for certain of its inmates to finish their sentences at the Employer's Crossroads facility. The inmates are sent to the Employer and reside at the Crossroads facility where the residents are provided many services to help them make their transition into civilian life smoother. The Employer receives approximately 250 inmates from the Illinois Department of Corrections. Of the 250 inmates, approximately 210 are male and the rest are female. The contract between the Employer and the State of Illinois requires that the Employer provide its own facilities for Department of Corrections inmates who participate and reside at the Crossroads work release program. The contract requires the facility to comply with American Correctional Association (ACA) standards. The ACA accredits work release programs, jails and prisons. The Employer owns the building in which the Crossroads program operate at 3210 West Arthington Street in Chicago. This facility became fully accredited by the American Correctional Association (ACA) in 1986 and was reaccredited in 1990. The contract calls for the facility to have adequate space, furnishings, and other physical requirements; adequate food service; adequate medical services; access to mail for residents; access to religious services; adequate staffing to provide 24 hour security coverage for the supervision of residents and the protection of the community.

The Employer's Crossroads work release facility is a five story building in the shape of a "U." The front entrance of the building is located at the bottom of the "U" shape. The front entrance leads to the center stair case which is used exclusively by the staff, the residents, and any visitors. There is also a West entrance which is only used for deliveries of goods and supplies from vendors. There is also a stair case to each side of the center stair case. Those side stair cases are seldom used; they are used only as fire escapes or to carry large bulky items in or out of the facility. There are two regular fire escapes at the end of the corridors on each wing, at the back of the building. As each landing in the staircase, and the fire escapes, there is a locked door and also a surveillance camera. The doors cannot be opened from the outside, only from the inside; thus anyone can exit through the doors, but cannot enter. The Employer rents office space to the Cook County Adult Probation Department and the YMCA on the first floor of the facility. Staff and visitors of

these organizations use the front entrance, but are not searched upon entry into the facility. They are only searched if they enter the work release program premises.

The Employer operates two programs at its 3210 West Arthington location, the Crossroads Community Correctional Center work release program and the Electronic Detention Program. The Crossroads work release program is separate from the Electronic Detention Program, which the Employer operates under a separate contract. The Petitioner wishes to represent only the Correctional Residence Counselor I (CRC I) employees who work for the Crossroads work release program and does not desire to represent the employees of the Electronic Detention Program.

The work release program is divided into two sections, the program department and the security department. The program department employs about 13 case managers who are responsible for the needs of the resident inmates, such as employment counseling and therapy. The case managers develop and maintain a list of outside services which may provide help to Crossroads residents. They also accompany residents to court and parole hearings. The written job description of the case manager states that their basic function is to provide selected counseling directly to program residents and coordinate the provision of other counseling services to optimize the resident's successful re-entry to civilian life upon release from the program. This position requires a college degree in social work, criminal justice, behavioral science, or counseling and guidance. The Petitioner does not seek to represent the case manager employees in the program department.

The security department employs approximately 45 CRC I employees. The written job description states that the CRC I employee's basic function is to perform "assigned security duties during assigned shift in accord with [Crossroads] Center policies and procedures to ensure the safety and security needs of residents, staff and visitors." The job description does not list counseling of residents as one of the CRC I employee's duties. All CRC I employees are required to have a high school diploma or equivalent certification, or one year of social work or correctional experience.

The following employees are also employed in the security department of the Crossroads work release program: the Correctional Residence Counselor II (CRC II), the Correctional Residence Counselor III (CRC III), Unit Managers, and the chief of security who is in charge of the security department. The parties stipulated and I find that the CRC II, the CRC III and the Unit Manager employees are supervisors as defined by Section 2(11) of the Act. The employees in these three classifications have the authority to hire and fire or recommend the hire and fire of employees, they direct the work of, and also train the CRC I employees.

The Employer's personnel office advertises whenever a job vacancy for a CRC I employee occurs. Applications are screened by the personnel office and then referred to the chief of security of the Crossroads program who interviews the applicants. If the applicant is to be hired, the clearance procedures provided under the state contract regarding background investigations of all employees are followed.

The contract states that all applicants approved for hire by the Employer for positions funded by the contract are required to undergo a background investigation as a condition of employment. The applicant is also required to provide a

urine sample. The contract also stipulates that all personnel may be subject to a urinalysis or blood test if there is reasonable suspicion to believe that they are under the influence of or using controlled substances or marijuana while they are on duty.

The Department of Corrections conducts "Executive Reviews" on applicants who were previously employed by the Illinois Department of Corrections, and those whose background investigation reveals them to have been convicted felons. Depending on the results of the background investigation and Executive Review of applicants, the Department of Corrections informs the Employer if the applicant is suitable for hire. Even though the applicant may be approved for hire by the State, the Employer may decide not to hire the applicant.

The work release contract states that the Department of Corrections shall provide training as it deems necessary for the work release program staff, technical assistance as it deems necessary, and an adequate supply of printed forms to the Employer. Internally, the Employer trains the CRC I employees on how to fill out forms required by the State, they do not receive any training on how to protect themselves or how to handle weapons. The State trains the CRC I employees in filling out its required forms, how to handle prisoners, how to use a walkie-talkie radio, what to look for when conducting a search, and how to distinguish gang affiliations. The State does not train the CRC I employees in the use of weapons or other forms of self protection. No employee of the work release program is given a metal badge similar to peace officers. The CRC I employees are not bonded and the State does not require that the program employees be sworn in or licensed as peace officers. The CRC I employees are not required to wear uniforms; they wear street clothes. They do not carry weapons or handcuffs and wear no badges.

All employees of the work release program must wear identification cards at all times; those identification cards are approved by the Department of Corrections. The Employer also issues its own identification card to all of its employees.

The Department of Corrections approves staff patterns maintained at the work release program facility and can direct the staffing of certain posts in order to maintain the security of the facility. The Department of Corrections may invoke adjustments for failure to provide satisfactory levels of service based on the Employer's failure to maintain the program levels required by the terms of the contract. The adjustments may consist of financial penalties, closing the work release facility or altering staffing patterns.

A more in depth description of the duties and responsibilities of the CRC I employees follows. The CRC I employees go to the Department of Correction instructions to pick up the inmates that will reside at the Employer's work release facility and participate in the work release program. The inmates are transported in vans belonging to the Employer, which have no bars. During transport, the inmates are handcuffed and wear institution uniforms. Technically, the residents are still in the custody of the Department of Corrections, and are still considered inmates.

Once at the work release facility, the residence are given a rule book by the CRC I employees, and they review the rules together. The rule book specifies what the residence can or cannot do, reasons why the residence can be given disciplinary reports, how they become eligible for "Passes"

to exit the facility, and what their responsibilities are, such as keeping the bathroom clean, and cleaning their own room. The residents eat and sleep in the facility. About 2 weeks after their arrival, the residents are released during the day and allowed to go to work on their own, and to attend educational training or support group programs such as Alcoholics Anonymous, Cocaine Anonymous, and Narcotics Anonymous. The residents sign in and out of the facility and the Employer's staff make calls during the day to check on the residents and make sure they are where they should be. When a resident wants to leave the facility, but does not have a pass, the CRC I employee will call the resident's employer to see if the resident is scheduled to work. If the resident is scheduled to work, the CRC I employee informs his supervisor to issue a pass for the resident.

Persons entering or leaving the Employer's work release facility do so through the front entrance. A CRC I employee is posted at the front door. The CRC I employees make sure that no unauthorized personnel enter the building. Everyone entering the facility must provide identification. The CRC I employees log all visitors in and out and search all visitors and residents who enter the facility for contraband. Contraband includes weapons, drugs, food and other items. The CRC I employees "frisk" or "pat down" a person during a search. Males are searched by male CRC I employees and females are searched by female CRC I employees. Other employees who can conduct the searches are the CRC II, and CRC III employees. The Department of Corrections has an Administrative Directive pertaining to how searches should be conducted. The directive is numbered 05-01-109, and is entitled "Searches of Persons, Vehicles and Property Entering/Leaving Correctional Facilities."

According to Department of Corrections directives, all work release employees must be searched at least once a month, and a record of such must be kept. The work release staff is searched at random.

A CRC I employee can confiscate any contraband found after conducting a search. The employee confiscating the contraband enters it in a log and reports the finding to a supervisor. The contraband is then stored in a secure place and returned to the owner upon leaving if it is not an illegal article.

All packages, parcels and similar items are also searched. Employee vehicles are searched only if there is a suspicion of drug possession. The CRC I employees conduct periodic surveys of the parking lot to check on the vehicles. If a vehicle is in the process of being vandalized or stolen, the CRC I employee informs the supervisor of the theft.

The front entrance of the facility is under surveillance by a video camera and a CRC I employee watches the monitor. There are also cameras throughout the building surveying the corridors. On the first floor of the building is the cafeteria where the residents eat. The CRC I employees escort the residents from their floor to the cafeteria. The residents live on floors 2, 3, 4, and 5. Across from the center stair case, on each floor, is a control room staffed by a CRC I employee. In each control room there are about 8 monitors which survey the floor, and one of the monitors shows the front entrance. The CRC I employee in the control room watches the monitors for any unusual activity, logs in any abnormality and notifies a supervisor. The Petitioner's witness stated that unusual activity includes: a resident going

into another resident's room, a resident emerging from his room improperly dressed, and residents in the stairway. A CRC I employee spends more than half of his time inside the control room and may spend about two and a half hours watching the monitors. Inside the control room, there is also a telephone, a short wave radio (walkie-talkie), and log books. There is a buzzer system in each control room which allows free access through the doors, otherwise if the buzzer is not used and a door is opened, an alarm will sound. The CRC I employees are responsible for responding to the alarm when a door is opened without the use of the buzzer system. The CRC I then investigates and makes an incident report when there has been a false alarm or an escape.

Apart from the control room duties, the CRC I employees perform other duties. The CRC I employees perform a "head count" or census of residents at least 3 times a day. The CRC I employees check to make sure that the residents are in their rooms, or that their doors are locked. The CRC I employees also walk the corridors and check for damage and fire hazards. If a CRC I employee has any suspicion of wrongdoing by a resident, the employee can initiate an investigation which can include a "room shake down." In a room shake down, the CRC I employee searches a resident's room for contraband and goes through everything in the room. Sometimes the CRC I employee will search a whole floor for contraband. Trained dogs are also used in the searches to sniff out controlled substances. If any contraband is found, the CRC I employee will write a disciplinary report.

The residents can walk around freely on their floor. There may be from 35 to 60 residents on each floor. The residents have a key to their room only. The CRC I employees have keys only for the floor they are stationed on; the management staff has master keys on the facility. No peace officers are permanently stationed at the Crossroads facility. The CRC I employee calls his supervisor for instructions when a resident becomes unruly. If a CRC I employee should be attacked by a resident, the employee is instructed to call for backup or to call the Chicago police or the state police. If a residents needs to be held until the police arrive, the staff will lack the residents in a room. However, if the disturbance results in a life threatening situation, the Crossroads staff are instructed not to restrain the residence, but to let the residents run out of the facility. The Department of Corrections is always informed when a resident is involved in a disturbance.

The CRC I employees also safe guard the premises. They are to prevent anyone from damaging the Employer's property. If they discover any damage, they investigate the damage and make a report. The CRC I employees also attempt to prevent the theft of any Crossroads property. For example, if a CRC I employee witnesses another employee carrying a television set out, the CRC I will challenge the person. If that person does not obey the CRC I, the CRC I will report the incident. The CRC I is not supposed to physically restrain any individual; rather the CRC I reports the incident to the supervisor and to the police, if necessary.

The CRC I employees are also in charge of dispensing medicines to the residents to ensure the residents take their medicine, and that the residents do not take any medicine not prescribed for them. The CRC I employees are also expected to perform cardiopulmonary resuscitation (CPR). A CRC I employee will accompany a resident to court if the resident

needs to make a court appearance. The CRC I employee also accompanies residents when they do community work. When the CRC I employee leaves the Crossroads facility to perform their other duties, they only carry a walkie-talkie; they do not carry any weapons or handcuffs. Handcuffs are only given out by the supervisors.

The CRC I employees are also in charge of “work teams.” The work teams consists of a CRC I employee who escorts a team of about 4 to 8 residents to clean up the highways. The residents pick up garbage along the highway. The CRC I employee ensures that the residents do not run away or escape, and that they return in an orderly fashion. No CRC I employee has ever been attacked by residents when assigned to a work team.

The CRC I employees are responsible for issuing a Resident Disciplinary Report, or a disciplinary ticket, to residents. It is considered a breach of discipline if a resident damages any property within the Crossroads facility, answers back, or refuses to do any work in the facility. If a resident issues a disciplinary report, they may respond to the report in writing. The Crossroads staff then holds a hearing to determine if the resident was involved in a breach of discipline. CRC I employees participate in the disciplinary report hearings; however, the employee who issued the disciplinary report does not participate in the decision making. If a resident commits a minor infraction of the rules, one CRC I employee holds the hearing. If the resident commits a major infraction, two Crossroads staff members hold the hearing. The Crossroads staff who hold the hearing then make a recommendation to the Crossroads Center Supervisor whether to reduce the amount of “good time” accumulated by a resident. If a resident’s “good time” is reduced, his time of release from the institution is prepared and he must serve a longer sentence. The recommendation to reduce a resident’s “good time” is then conveyed to the Department of Corrections, which may accept or overrule the recommendation.

The CRC I employees also perform other duties. The supervisors may send the CRC I employees to pick up packages. The CRC I employees take Crossroads vehicles to repair shops, and perform some cleaning and maintenance duties. The CRC I employee stationed at the 2-West post is also responsible for receiving calls from the Electronic Detention Program. A CRC I employee will do a spot check on residents who participate in the Electronic Detention Program, to see if the resident is at his designated site. If the resident is not at the designated site, then the Electronic Detention Program staff will ask the Crossroads supervisor and a CRC I employee to write a warrant for the missing resident.

Other classifications at Crossroads perform the same functions as CRC I employees. Supervisors or managers fill in for a CRC I employee if there is a need. Case managers, unit managers, CRC II employees, CRC III employees and the clerical staff perform the functions of a CRC I employee when that employee is absent or called away from his post. A receptionist will occasionally buzz people into the facility when the CRC I employee is on break. However, the CRC I employee cannot fill in for an employee in a different classification.

CRC I employees may be disciplined if they do not perform a head count of residents. They may also be disciplined if the floor is not clean. After an employee is issued a dis-

ciplinary report, he may appeal it to his supervisor. If the employee is not satisfied, he can then appeal the disciplinary report to the chief of security, then to the director of Crossroads, then to personnel of the Employer.

The determinative issue in this case is whether the CRC I employees are guards in the Act. In *A.W. Schlesinger Geriatric Center, Inc.*, 267 NLRB 1363 (1983), the Board held that maintenance employees who were hired within the specific intent of meeting security needs were guards as defined in the Act. The Employer hired two employees who spent 50 to 70 percent of their time doing security functions. They locked and unlocked doors and gates, observed shift changes, had the authority to open packages, were responsible for assuring the safety of employees arriving for and leaving from work, made rounds of the Employer’s facility, and checked lights in the parking lot and other areas. If the security employees encountered an employee or other individual creating a disturbance, or a trespasser, they would ask that the disturbance cease or that the person leave. The security employees were instructed to contact a supervisor or a law enforcement official first to avoid confrontation if possible. The security employees did not have special training as guards and did not wear uniforms or carry weapons. In performing their security functions, the Board observed that the security employees enforced against employees and other persons rules to protect the safety of persons on the employer’s property, keep unauthorized persons off the employer’s property, and protect the premises. The Board noted that although the security employees may report to supervisors or contact the police, that did not detract from their guard status.

I find that the Correctional Residence Counselors I (CRC I) employed in the security section of the Crossroads Community Correctional Center are guards within the meaning of the Act. In the present case, the CRC I employees are employed to do security work, which is to watch over inmates and safeguard the Employer’s premises. The CRC I employees pick up inmates from the Department of Corrections institutions and deliver them to the protect the Employer’s premises from trespassers, disturbances, and damage to the premises. Some of the CRC I employees are stationed inside the facility observing the premises through monitors in their control rooms. The CRC I employees search or “frisk” persons and employees entering the facility for contraband. They do head counts of residents. CRC I employees can conduct room “shake downs,” if they suspect a resident is in possession of some contraband, and can search the whole floor in the process. The CRC I employees can initiate investigations if they find damage to or theft of the Employer’s property. They search other Crossroads employees. They accompany residents to the cafeteria and to court. While detailed to a work team, the CRC I employees insure that the residents do not escape. It is not determinative that the CRC I employees are not trained in self protection, do not wear uniforms, and do not carry weapons. *Thunderbird Hotel, Inc., et. al.*, 144 NLRB 84, 87–88 (1963). The CRC I employees are employed for security purposes and enforce against employees, residents, and other persons rules to protect the safety of persons on the Employer’s premises, keep unauthorized persons off the property and protects the premises. *A.W. Schlesinger Geriatric Center, supra*.

CRC I employees do not take direct action against violators of Crossroads rules, and are instructed to notify their su-

pervisor or call the police. CRC I employees are instructed to let the residents escape from the facility during a disturbance if life threatening harm will result. They are also instructed to let employees or other persons get away if those persons do not obey the CRC I employee's commands. Whenever an incident occurs, CRC I employees are instructed to log it and contact their supervisor, and if the encounter may result in bodily harm, to contact law enforcement officials immediately. The Board has recognized that when the employees in question otherwise meet the statutory requirement for guards, the fact that they do not take direct action against violators of company rules, but instead are merely instructed to report suspicious activity to a third party, will not defeat their guard status. *A.W. Schlesinger Geriatric Center, supra*. Therefore, based on the above, I find that the CRC I employees are guards within the meaning of the Act.

The Petitioner asserts that the CRC I employees are not guards, but rather persons who are employed by the Employer to act as counselors and caretakers for the inmates in the work release program. The Petitioner also asserts that the CRC I employees perform other duties, in addition to guard duties, and can only be found to be guards when the guard function is an essential part of the employee's duties. Thus, the Petitioner alleges what the CRC I employees lack the re-

sponsibility to enforce the Employer's rules against employees and intruders, and are merely part of the production process and not guards within the meaning of the Act. The Petitioner cites *Deluxe General Incorporated*, 241 NLRB 229 (1979), to support its position. In that case, the Board held, contrary to the Regional Director, that part-time whistlemen and flagmen were not guards. The whistlemen and flagmen regulated the flow of traffic during the Employer's filming of a movie and were not vested with any authority to enforce rules against employees or other persons to protect the Employer's property. Thus the Board concluded that the functions of the whistlemen and flagmen were an integral part of the Employer's production process, and not entrusted with the protection of the Employer's property nor with the safety of persons on the Employer's premises. In the present case, the Employer utilizes case managers from its program department at the Crossroads facility to perform the counseling. The CRC I employees who the Petitioner seeks to represent are in the security department and perform security functions. The CRC I employees enforce against employees, residents, and other persons rules to protect the safety of persons on the Employer's premises, keep unauthorized persons off the property and protect the Employer's premises. Thus, contrary to the Petitioner's assertions, the CRC I employees are guards within the meaning of the Act.